IN THE MATTER OF a Board of Inquiry
appointed pursuant to s.38(1) of the
Human Rights Code, R.S.O. 1990, c.H.19

BETWEEN

ELEANOR BROWN

Complainant

- and -

DMO INDUSTRIES, AL STEINFIELD & BOB OUELLETTE

Respondents

Date of Complaint: 23 January 1991

Date of Decision:

Board of Inquiry: Professor Constance Backhouse

Counsel: Counsel for the Commission, Fiona Sampson

Counsel for the Respondents, Steve McCormack

Counsel for United Steelworkers of America, Local 8222, Paula Turtle

INTERIM DECISION

This complaint involves a claim by Eleanor Brown that her right to equal treatment with respect to employment has been infringed because of her sex, race, colour and ancestry, contrary to sections 5(1), 5(2) and 9 of the Human Rights Code, R.S.O. 1990, c.H.19. At the outset of the hearing, counsel for the respondents brought a motion to add a party respondent. Specifically, they requested that the board exercise its discretion to add the United Steelworkers of America, Local 8222, the trade union which acts as the exclusive bargaining agent in the respondents' plant.

The Code speaks directly to the issue of parties in sections 39(2) and 39(3). Section 39(2) provides:

> The parties to a proceeding before a board of inquiry are,
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> a) the Commission, which shall have the carriage of the complaint;
> b) the complainant;
> c) any person who the Commission alleges has infringed the right;
> d) any person appearing to the board of inquiry to have infringed the right;
> e) where the complaint is of alleged conduct constituting harassment under subsection 2(2) or subsection 5(2) or of alleged conduct under section 7, any person who, in the opinion of the board, knew or was in possession of facts from which the person ought reasonably to have known of the conduct and who had authority to penalize or prevent the conduct.

Section 39(3) provides:

> A party may be added by the board of inquiry under clause (2)(d) or clause (2)(e) at any stage of the proceeding upon such terms as the board considers proper.

Counsel for the respondents, Mr. McCormack, argued that the

trade union was a "necessary party" to the hearing of the complaint. His argument centred on the wording of the complaint, which alleges that it was co-workers, not managerial officials, who made racial slurs in the workplace. One of the allegations states that racial slurs were made "at a union meeting", while other allegations make reference to attempting to deal with the matter through a union grievance. Counsel for the respondents noted that the collective agreement in force at the plant at the relevant time contained a "no discrimination" clause, wherein the employer and union agreed that there should be no discrimination on the basis of race.

Counsel for the United Steelworkers, Paula Turtle, opposed the application. She noted that, based on the complainant's allegations of racial discrimination, the union had filed a grievance under the collective agreement, which had been resolved. She argued that the union was not a necessary party to the hearing, and that none of the allegations in the complaint stipulated that the union had done anything to infringe Eleanor Brown's rights under the Code. Counsel for the Human Rights Commission, Fiona Sampson, took no position on this issue.

Boards of inquiry have exercised their discretion in the past to add respondents where an individual or organization has been involved with the incidents surrounding the complaint, and where no prejudice would result. See, for example Tabar v. Scott and West End Construction Limited (1982), 3 C.H.R.R. D/1073; Dudnik v. York Condominium Corp. No. 216 (No 2) (1990), 12

C.H.R.R. D/325; Rapson v. Stemms Restaurants Ltd. (1991), 14 C.H.R.R. D/449.

But the basis for adding such parties must be rooted in the legislation. Section 39(2)(d) requires that the party added must appear to the board of inquiry to have infringed a right under the Code. In my opinion, this is not such a case. It is true that the complaint makes reference to the behaviour of co-workers, which at least once is alleged to have occurred in meetings sponsored by the union. But neither Eleanor Brown nor the Human Rights Commission have made any allegations that the union, or its officers, were responsible for the racial slurs. There are no allegations that the union refused to deal with Eleanor Brown's complaint or grievance concerning the same. Nor are there any allegations that any provision of the collective agreement directly or indirectly violates the Code. Consequently, at this point there is nothing on the record from which the board could draw the conclusion that the union "appears to have infringed" a right under the Code.

Since this complaint also concerns allegations of harassment under s.5(2), the Code allows a board to add a party where such person knew or ought reasonably to have known of the conduct, but only where such party had the "authority to penalize or prevent the conduct." The wording of the complaint suggests that union officials would have had some knowledge of the events surrounding the alleged discriminatory acts. But the trade union had no authority to discipline employees for such behaviour, since the

power to impose disciplinary measures within the employment context lies with the employer.

The case of Renaud v. Board of School Trustees, School District No.23 (Central Okanagan) and C.U.P.E., Local 523 (Supreme Court of Canada, 24 September 1992), discusses the basis for finding that a union is a party to discrimination. Mr. Justice Sopinka notes at p. 20 that a trade union "may cause or contribute to the discrimination in the formulation of the work rule that has the discriminatory effect on the complaint. This will generally be the case if the rule is a provision in the collective agreement." But this complaint does not take issue with any work rule, and cites no provisions of the collective agreement as causing or contributing to the problems cited by the complainant.

Second, Mr. Justice Sopinka notes at p. 21 that a union may become a party to the discrimination where it "impedes the reasonable efforts of an employer" [in] "seeking to remove or alleviate the discriminatory effect [of a discriminatory condition of employment]." Again, there is nothing in the allegations presently before this board to suggest that the union had attempted to impede or block the efforts of the employer to create a workplace free of racial harassment.

Nor do I agree with respondents' position that, without the addition of the union as a party, the board will be unable to hear the full evidence surrounding the complaint. There is nothing to prevent the respondents from calling union officials

or Eleanor Brown's co-workers as witnesses. There is nothing to prevent the respondents from making their own complaint that the trade union has infringed the provisions of the Code. But lacking any allegations of wrong-doing on the part of the union, I am unable to make the order requested. Accordingly, I do not believe it would be appropriate to add the United Steelworkers, Local 8222, as a respondent to this complaint. The respondents' application is denied.

September 9, 1993
Date

Constance Backhouse
Chair, Board of Inquiry